155-693

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1151~~. 664

ELIJAH B. SHERMAN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 17, 1894.

(15,535.)

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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 17, 1894.

1 In the Court of Claims.

ELIJAH B. SHERMAN }
vs. } No. 17817.
THE UNITED STATES. }

I.—*Reference of this Cause to the Court of Claims by the Secretary of the Treasury.*

The letter of the Secretary of the Treasury, dated November 25, 1892, referring this case, under section 1063 of the Revised Statutes of the United States, was filed in the Court of Claims on the 26th day of November, 1892, and is fully set out in the following petition:

2 II.—*Petition. Filed November 28, 1892.*

ELIJAH B. SHERMAN }
vs. } No. 17817.
THE UNITED STATES. }

To the honorable the judges of the Court of Claims:

The petition of Elijah B. Sherman, claimant in the above-entitled cause, respectfully shows to the court—

First. That the petitioner is a citizen of the United States and a resident of the city of Chicago, in the State of Illinois.

Second. That since the year 1884 he has been a commissioner of the circuit court of the United States for the northern district of Illinois, and chief supervisor of elections for said district, duly qualified, and that he is still acting as such supervisor.

Third. That he performed the duties required of him as chief supervisor of elections under the provisions of title 26 of the Revised Statutes of the United States, known as "The Elective Franchise," in connection with the election held in the city of Chicago, city of Lake View, town of Lake, and village of Hyde Park, in November, 1888, and the registration prior thereto, at which election Representatives in Congress were voted for.

Fourth. That on or about the 25th day of July, 1892, having performed certain services and made certain disbursements as said chief supervisor of elections in connection with said elec-

3 tion held as aforesaid, November, 1888, he made an account therefor to wit: For "services rendered as such chief supervisor in entering and indexing the records of his office, to wit, the record of the names of persons who registered and voted at the election held in the city of Chicago, city of Lake View, town of Lake, and village of Hyde Park, in November, 1888, at which election Representatives to Congress were voted for, 61,482 folios, at 15 cents per folio, amounting to $9,222.30," and for disbursements made in connection therewith amounting to $240.35; that said account was duly verified and was presented to the United States circuit court then being held in the city of Chicago, in said northern

district of Illinois, for approval; that the services charged for in said account, and the disbursements made in connection therewith had not been included in any previous account presented to said circuit court for approval.

Fifth. That said services were actually and necessarily performed and said disbursements made by the petitioner in compliance with the provisions of title 26 of the Revised Statutes of the United States, and that it was the duty of said court, then and there to approve and certify the same to be just and according to law.

Sixth. That said account was presented in open court in the presence of the United States district attorney; that the court inspected the records referred to in said account, and entered an order reciting that said account was for services rendered by said chief supervisor in entering and indexing the records of his office; that the amount of such claim was for 61,482 folios, at 15 cents per folio, $9,222.30, and for stationery and supplies $210.35, and amounting in all to $9,432.65; and finding that said account was correct as to the number of folios embraced therein, and that the item for stationery and supplies necessarily used in making said record was correct, but declining to approve said account or certify the correctness thereof, for the reason that the circuit judge thought

4 the statute did not authorize the work charged for by the chief supervisor.

Seventh. That petitioner presented said account, verified as aforesaid, with a certified copy of said order thereto attached, to the proper accounting officer of the Treasury Department, who declined to pay the same; that thereupon, afterward, to wit, the 25th day of November, 1892, the First Auditor of the Treasury certified said claim to the honorable Secretary of the Treasury, and transmitted the same to him together with all the vouchers, papers, documents and proof pertaining thereto, which certificate is as follows:

"TREASURY DEPARTMENT,
"OFFICE OF THE FIRST AUDITOR,
"WASHINGTON, D. C., *November* 25, 1892.

"Hon. Charles Foster, Secretary of the Treasury.

"SIR: I have the honor to hereby certify to you, that on the 3d day of August last (A. D. 1892), Elijah B. Sherman, chief supervisor of elections for the northern district of Illinois, submitted to this office, for settlement, a claim against this department, amounting to the sum of nine thousand four hundred and thirty-two dollars and sixty-five cents ($9,432.65) for services rendered and expenses incurred, by him as such supervisor, which had, theretofore, to wit, on the twenty-ninth day of July, A. D. 1892, been submitted by said supervisor to the U. S. circuit court, then being holden in said district, present Hon. Walter Q. Gresham, judge; as appears by a duly certified copy of the same, and the proceedings had thereon, herewith transmitted.

"It also appears from said copy of the proceedings of said court, that said judge, after having 'read said claim and inspected the records therein referred to, and after consideration of the same,'

found that 'the account is correct, as to the number of folios embraced in it, and that the bill charged for stationery is also correct;' but 'declined to approve said account or to certify to its correctness, for the reason that the statute (Revised Statutes, sec. 2031), does not authorize the work charged for by the said supervisor.'

"As this claim, in my judgment, involves a controverted question of law, I have deemed it my duty under the provision, in that behalf, contained in sec. 1063 Revised Statutes, U. S., to make this certificate; and herewith transmit 'all the vouchers, papers, proofs, and documents pertaining to said claim,' with the view that the same may be transmitted to the Court of Claims, there to be proceeded in as provided for in said section 1063 Revised Statutes.

"Very respectfully, your obedient servant.

"(Signed) GEO. P. FISHER,
"*First Auditor.*"

Eighth. Thereupon and on the same day, the honorable acting Secretary of the Treasury transmitted to this honorable court the claim of petitioner with all the vouchers, papers, proofs and documents pertaining thereto, which letter of transmittal is as follows:

"TREASURY DEPARTMENT,
"OFFICE OF THE SECRETARY,
"WASHINGTON, D. C., *November* 25, 1892.

"The honorable the chief justice and judges of the Court of Claims:

"Pursuant to the provisions of section 1063 of the Revised Statutes of the United States, I hereby refer to your honorable court for adjudication the claim of Elijah B. Sherman, chief supervisor of elections for the northern district of Illinois against this department, amounting to the sum of nine thousand four hundred and thirty-two dollars and sixty-five cents ($9,432.65), for services rendered and expenses incurred by him as such supervisor.

"This account, having been submitted to the First Auditor of the Treasury, was on the 25th instant referred by him to the Secretary with the recommendation that it be referred to your honorable court as the claim involves a controverted question of law, arising out of the fact, as stated by the auditor in his letter of reference (which is herewith transmitted) that the United States judge for the northern district of Illinois 'declined to approve said account, or to certify to its correctness, for the reason that the said statute (section 2031) does not authorize the work charged by the said supervisor.'

"All the vouchers, papers, proofs and documents pertaining to said claim are herewith transmitted.

"Respectfully yours,

"(Signed) O. L. SPAULDING,
"*Acting Secretary.*"

Ninth. Petitioner avers that in connection with said election and registration, he required of the supervisors of election, lists of the persons who registered and voted in their respective election districts or voting precincts; that said lists were made by such supervisors and returned to petitioner, and were by him filed and became a part of the records of his said office; that said lists so required, were necessary for properly guarding and scrutinizing said election and the registration prior thereto; that said lists so required by said chief supervisor, contained the name of each person registered, his residence, nativity, color, term of residence in the precinct, county and State; whether naturalized or native, and if naturalized whether by act of Congress or by order of court, and if by order of court, the time when and the court in which said naturalization took place; whether qualified voters; the date of application to be registered; whether erased or restored, and if restored, whether by commission or by order of court; whether the person so registered voted, and if so, the number of his ballot; that at the time of such election and registration, such description of persons and the particulars relating thereto were required by the laws of the State of Illinois to be made by the board of registration; that in entering and indexing the records of his office as aforesaid, petitioner caused to be entered in permanent books prepared for that purpose, the names of all persons
7 who registered at said election, together with their residences and all other particulars required by the laws of the State of Illinois, as aforesaid, and nothing more; that the number of folios actually written in so entering and indexing the records of said office, was 61,482, and that there is justly due petitioner therefor, the sum of nine thousand two hundred and twenty-two dollars and thirty cents, being at the rate of fifteen cents per folio, as provided by law; that the said disbursements of two hundred and ten dollars and thirty-five cents made by the petitioner were for books, stationery and the like, necessarily used by him in so entering and indexing the records of his office as aforesaid.

Tenth. Petitioner avers that in the honest and conscientious discharge of the duties of his office as chief supervisor of elections, he actually and necessarily performed said services, and made said disbursements; that he is entitled to be paid therefor; that payment has been repeatedly demanded, but that no part of the sum so due him as aforesaid has been paid to him, or to any one for him, nor has any part thereof been allowed to him in any way as a credit or set-off by any officer or any department of the United States; that on the contrary allowance and payment has been refused; that no assignment or transfer of said claim or any part thereof has been made by him, but that said sum is now wholly due and unpaid.

Wherefore your petitioner prays judgment against the defendant for the sum of nine thousand four hundred and thirty-two dollars and sixty-five cents ($9,432.65).

ELIJAH B. SHERMAN, *Petitioner.*

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Elijah B. Sherman, being first duly sworn, deposes and says: That he is the claimant in the above-entitled action, that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

Sworn to and subscribed before me this 28th day of November, 1892.

FRANK A. BRANAGAN,
Notary Public.

[NOTARIAL SEAL.]

8 III.—*Traverse. Filed February* 16, 1893.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

9 IV.—*Findings of Fact and Conclusion of Law Filed by the Court.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

Claimant, Elijah B. Sherman, has been a commissioner of the United States and chief supervisor of elections for the northern district of Illinois since the year 1884, duly qualified, and is still acting as such.

II.

In connection with the congressional election of 1888 he performed the duties of chief supervisor of elections under the provisions of title 26 of the Revised Statutes of the United States, known as "the elective franchise," in addition to the duties of circuit court commissioner.

III.

On or about the 25th day of July, 1892, the claimant made and duly verified an account for certain services and disbursements as chief supervisor of elections in connection with the congressional

election of 1888, to wit, for entering and indexing the records of persons registered and of voters, being the records of the chief supervisor's offices, 61,482 folios, at 15 cents per folio, $9,222.30, and for disbursements, amounting to $240.35.

IV.

Said account was duly presented in open court in the circuit court of the United States for said district in the presence of the district attorney of the United States for said district; said court entered an order finding that said account was correct as to the number of folios embraced therein, and that the item for stationery and supplies necessarily used in making said record was correct, but declining to approve said account or certify the correctness thereof for the reason that said circuit judge thought the statute did not authorize the work charged for by the chief supervisor.

V.

No part of the work done, disbursements made, or services referred to and charged for in the aforesaid account has been included in, covered by, or embraced in any account made or presented to the accounting officers of the Treasury or any other department or office of the United States other than the account sued upon herein, and no payment has been made for any item charged therein, and all of said service was performed within six years before the commencement of this suit.

VI.

Said account was presented to the accounting officers of the United States Treasury Department for payment and payment thereof was refused; thereupon the First Auditor of the Treasury, on the ground that said claim involved a controverted question of law, certified said claim to the honorable Secretary of the Treasury and transmitted the same to him, together with all the vouchers, papers, documents, and proofs pertaining thereto, that the same might be transmitted to the Court of Claims, as provided in section 1063, Revised Statutes; and thereupon the honorable acting Secretary of the Treasury transmitted to this court the claim of petitioner, with all vouchers, papers, proofs, and documents pertaining thereto, to be proceeded with in this court according to law.

VII.

The claimant, as chief supervisor of elections, required of supervisors of elections lists of the persons who registered and voted in their respective election districts or voting precincts at said election held in November, 1888; such lists when made were returned to and filed by him and became a part of the records of his office; said lists were necessary for properly guarding and scrutinizing said election and the registration prior thereto.

VIII.

The nature of the services described in the account in suit was the entering and indexing of the records of persons who registered for the purpose of voting at the election for Representatives in Congress held in November, 1888, in the city of Chicago, city of Lake View, village of Hyde Park, and town of Lake, in said northern district of Illinois, and said index record contained the particulars relative to each voter then required by the laws of the State of Illinois, and as shown in Exhibit "A." The matter contained in said index record was contained in the registers or lists made by supervisors of election and returned to claimant as chief supervisor of elections, and which became part of the records of his office.

IX.

The disbursements charged for are for large index volumes for entering and indexing the records of the claimant's office and for stationery and supplies necessarily used in and about the entering and indexing of said records, amounting to $210.35.

12 X.

(This finding as amended by the court February 19, 1894, stands as follows:)

Before the services now sued for were performed the claimant made out and presented his account as chief supervisor of elections for services rendered at the congressional election of 1888, in which account, and while it was in the possession of the First Comptroller and before it was approved by him, the claimant endorsed the following words:

"The foregoing account and claim against the Government is presented without prejudice to my right to present hereafter a further account and claim for the services in entering and indexing the records of my said office touching the said election of 1888 and the registration prior thereto and for any other services rendered by me in connection with said election which is not included in the foregoing account and without prejudice to the right to sue therefor."

The index so prepared of the election of 1888 was not in fact made until after the congressional election of 1890. It was used by the claimant in the election of 1892, but to what extent does not appear. The similar index of the election returns of the election of 1890 was made out before the election of 1892 and was used in that election and has been paid for.

(See table marked p. 13.)

14 *Conclusion of Law.*

On the foregoing findings of fact the court decides as conclusion of law:

The services which form the cause of action in this suit not hav-

ing been rendered at the proper time, to wit, before the congressional election of 1890, and the defendants having therefore derived no benefit from them in that election they must be deemed voluntary, and for them the claimant should not recover. Petition dismissed.

BY THE COURT.

15 It appears of record in this case that the claimant filed a motion for a rehearing June 8, 1893, and on the 15th day of December, 1893, claimant filed a supplemental motion to amend the findings of the court; that on the 19th day of February, 1894, the court overruled claimant's motion for a rehearing of the case and filed an amendment of its findings, as set out in said findings in this record.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

16 V.—*Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 29th day of May, A. D. 1893, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Elijah B. Sherman, be dismissed.

BY THE COURT.

The court filed no opinion in this case.

17 VI.—*Application of Claimant for and Allowance of Appeal.*

ELIJAH B. SHERMAN }
v. } 17817.
THE UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 19th day of February, 1894, in favor of the United States the claimant, by his said attorneys, on the 12th day of March, 1894, makes application for and gives notice of an appeal to the Supreme Court of the United States.

NEEDHAM AND COTTON,
Attorneys for Elijah B. Sherman, Claimant.

Filed March 12, 1894.

Allowed in open court March 13, 1894.

WILLIAM A. RICHARDSON,
Chief Justice.

18 In the Court of Claims.

ELIJAH B. SHERMAN }
vs. } No. 17817.
THE UNITED STATES. }

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of March, 1894.

Seal Court of Claims.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 15,535. Court of Claims. Term No. 1151. Elijah B. Sherman, appellant, *vs.* The United States. Filed March 17, 1894.

Office Supreme Court, U. S.
FILED
DEC 1 1894
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 664.

ELIJAH B. SHERMAN,
Appellant,
v.
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

CHARLES W. NEEDHAM,
For Appellant.

CHARLES H. ALDRICH,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 664.

ELIJAH B. SHERMAN,
Appellant,
v.
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

STATEMENT OF FACTS.

This is an appeal by Elijah B. Sherman, claimant, from a judgment of the Court of Claims entered on the 19th day of February, 1894, dismissing the petition of claimant for reasons set forth in the conclusions of law found on page fourteen of the Record—pages seven and eight of the printed Record—in this Court. The findings of fact by the Court of Claims upon the petition and evidence submitted in that Court are found on pages nine to thirteen, inclusive,

of the Record, pages five to seven, inclusive, of the printed Record. These findings of fact, in substance, are as follows:

The claimant, Elijah B. Sherman, has been a Commissioner of the United States and Chief Supervisor of Elections for the Northern District of Illinois since the year 1884, duly qualified, and was acting as such at the time of the hearing of this cause in the Court of Claims. In connection with the Congressional election of 1888 he performed the duties of Chief Supervisor of Elections under the provisions of Title 26 of the Revised Statutes of the United States, entitled the "Elective Franchise." Among the services rendered and the disbursements made by him as Chief Supervisor were those for entering and indexing the records of persons registered and of voters, being the records of the Chief Supervisor's Office, 61,482 folios at fifteen cents per folio, $9,222.30, and for disbursements amounting to $210.35, which items constitute the claim in this cause. The account of these items was duly presented in open court in the Circuit Court of the United States for said district, in the presence of the district attorney of the United States. Said court entered an order finding that the account was correct as to the number of folios embraced therein, and that the items for stationery and supplies necessarily used in making the record were correct. The Court declined to approve and certify said account "for the reason that said Circuit Judge thought the statute did not authorize the work charged for by the Chief Supervisor." No part of the work done, disbursements made, or services referred to and charged for in the account has been included in, or covered by any account made or presented to the accounting officers of the Treasury, or any other Department of the United States other than the account sued upon, and no payment has been made for any item charged therein.

The account was presented to the accounting officers of the United States Treasury Department for payment, and payment thereof was refused. Thereupon the First Auditor of the Treasury, on the ground that said claim involved a controverted question of law, certified the claim to the Secretary of the Treasury, and the Acting Secretary of the Treasury transmitted the claim with all vouchers, papers, documents, etc., to the Court of Claims for hearing according to law.

The claimant, as Chief Supervisor of Elections, required of supervisors of election in connection with the election held in November, 1888, lists of the persons who registered and voted in their respective election districts or voting precincts at said election, and such lists were made and returned to the claimant as Chief Supervisor and filed by him, and became a part of the records of his office; said lists were necessary for properly guarding and scrutinizing said election and the registration prior thereto.

The nature of the services described in the account for which this suit is brought was the "entering and indexing" of the records of persons who registered for the purpose of voting and who voted at said election, for representatives in Congress, in the city of Chicago, city of Lakeview, village of Hyde Park and town of Lake, in said Northern District of Illinois. The index record contained the particulars relative to each voter, showing his qualification to vote at said election under the laws of the State of Illinois, as shown in Exhibit "A" found upon page thirteen of the Record and between pages six and seven of the printed Record. The matter contained in said index record was taken from the registers or lists made by supervisors of election and returned to the claimant as Chief Supervisor of Elections, which lists became a part of the records of the office of the Chief Supervisor.

The disbursements charged are for large index volumes, and for stationery and supplies necessarily used in entering and indexing said records.

Before the services herein mentioned were performed the claimant made out and presented an account as Chief Supervisor for other services rendered at the Congressional election of 1888, and while this last-mentioned account was in the possession of the First Comptroller, and before it was approved by him, the claimant endorsed the following words upon it:

"The foregoing account and claim against the Government is presented without prejudice to my right to present hereafter a further account and claim for the services in entering and indexing the records of my said office touching the said election of 1888 and the registration prior thereto, and for any other services rendered by me in connection with said election which is not included in the foregoing account and without prejudice to the right to sue therefor."

The entering and indexing of the records of the election of 1888 was not in fact made until after the Congressional election of 1890. But it was made before, and used by the claimant as Chief Supervisor in the Congressional election of 1892.

An entry and index, in form and substance similar to the one in controversy, was made of the records of the election returns of the Congressional election of 1890, by the claimant, before the election of 1892, and was also used by him in that election, and his services for entering and indexing the records of the election of 1890 has been allowed and paid for by the Government.

Upon the question as to whether or not the claimant shall be paid his account for services in "entering and indexing" the records of the Congressional election of 1888, set forth in the foregoing findings of fact, the Court of Claims denied his

right to compensation therefor, and its conclusion of law thereon is as follows:

"On the foregoing findings of fact the Court decides as conclusion of law: The services which form the cause of action in this suit not having been rendered at the proper time, to wit, before the Congressional election of 1890, and the defendants having therefore derived no benefit from them in that election they must be deemed voluntary, and for them the claimant should not recover. Petition dismissed."

Specification of Errors.

We respectfully submit that the Court of Claims erred in its conclusion of law:

First. In holding that the right to recover in this case is conditioned upon the defendants having derived benefit from the services rendered by the claimant.

Second. In holding that the services mentioned must necessarily have been performed before the Congressional election of 1890.

Third. In holding that the services mentioned must be deemed voluntary, and therefore the claimant cannot recover.

Fourth. In dismissing claimant's petition.

Argument.

The right to recover compensation for the services mentioned in this cause is statutory and rests wholly upon the terms of the statute creating the office of Chief Supervisor of Elections, defining his duties, providing for the records of his office and prescribing the fees that shall be paid for the services rendered by the Chief Supervisor. This statute is entitled "Elective Franchise" Title 26, pages 352 to 357 of the Revised Statutes of the United States. The parts of this statute which bear directly upon and determine the issues

in this case are found in sections 2011 to 2015, inclusive, providing for the opening of the circuit courts of the United States and the appointment of supervisors of election. Sections 2016 to 2024, inclusive, prescribing the duties of supervisors of election, and sections 2025 to 2031, inclusive, providing for the appointment of Chief Supervisors and defining their duties and compensation. Section 2026 provides:

"The Chief Supervisor shall prepare and furnish all necessary books, forms, blanks, and instructions for the use and direction of the supervisors of election in the several cities and towns in their respective districts." * * * "he shall require of the supervisors of election, when necessary, lists of the persons who may register and vote, or either, in their respective election districts or voting precints, and cause the names of those upon any such lists whose right to register or vote is honestly doubted to be verified by proper inquiry and examination at the respective places by them assigned as their residences; and he shall receive, preserve, and file * * * all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed."

Section 2031 provides:

"There shall be allowed and paid to the Chief Supervisor, for his services as such officer, the following compensation, apart from and in excess of all fees allowed by law for the performance of any duty as Circuit Court Commissioner: For filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the preceding provisions, ten cents; for affixing a seal to any paper, record, report, or instrument, twenty cents; for entering and indexing the records of his office, fifteen cents per folio; * * * And the fees of the Chief Supervisors shall be paid at the Treasury of the United States, such accounts to be made out, verified, examined and

certified as in the case of accounts of Commissioners, save that the examination or certificate required may be made by either the circuit or district judge."

The purpose of this legislation is apparent. It was enacted to secure a fair election, at which all legal voters should be permitted to express their choice, illegal voting be prevented, and, as expressed in section 2018, "To the end that each candidate for the office of representative or delegate in Congress may obtain the benefit of every vote for him cast." To secure these objects supervisors of election were appointed, authorized and required to attend "at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a representative or delegate in Congress," and when required by the Chief Supervisor, to make lists of such voters giving their residence and qualifications. These lists, made by the supervisors at the polling places, and places of registration, are returned to the Chief Supervisor to be preserved for future reference and use and became a part of the records of his office. The value of these records consisted largely in the fact that they could be used in subsequent elections in detecting illegal voters, in establishing, in a degree, the right of legal voters to cast their ballots for representatives in Congress, and also as evidence in prosecutions for illegal voting under the statute. These records were used for reference by the Chief Supervisor and by supervisors of election at subsequent elections in scrutinizing the votes offered at such elections. They were entered in permanent form and indexed so that they might be easily referred to at the moment they were required, and the law provided in section 2031 that the Chief Supervisor shall be paid "for entering and indexing the records of his office, fifteen cents per folio." The Chief Supervisors adopted a blank

form of record, with appropriate columns and headings, giving the name, residence, and special qualifications required by the laws of the State in which the election was held. After the Congressional election the Chief Supervisor—having previously required of the supervisors' lists of the voters and persons registered, and such lists having been returned to him—entered in these books of record the name of each voter and person registered, indicating in the appropriate column his qualification or, in case his offer to register and vote had been disallowed, the reason for challenging such vote. These names and facts taken from the minute-books of the supervisors of election, arranged in alphabetical order and entered in permanent form, constitute, under the practice, the "entering and indexing" of the records and puts them in convenient form for reference and use at subsequent elections. The minute-books received from the supervisors are filed in the office of the Chief Supervisor. It has been claimed by the defendant that only these minute-books were to be indexed, but they would be of no practical value in such case. The name of a voter could not readily be found, and the number of these lists being so great and their arrangement crude and imperfect it would be impossible to make the use of them intended by the statute. The subject-matter of these lists was to be "entered and indexed." The word "enter" as defined by Webster means "to enroll; to record; as to enter a name, a date or a statement of fact," and to "index" is another act defined as meaning "any table for facilitating reference to topics, names, and the like in a book." The statute clearly states two acts which are to be performed by the Chief Supervisor, namely, "entering *and* indexing," the object being to put into a proper record of convenient form and of easy reference the facts pertaining to the qualifications of each person offering to register and vote at Congressional elections. A sample

page of this record adopted by Chief Supervisors is found between pages 6 and 7 of the printed record in this case. These records vary in States as the qualifications of the voters are not always the same. No question is raised by the Court of Claims as to the propriety and correctness of this method of entering and indexing the records of the Chief Supervisor. On the contrary, entering and indexing has been done in this manner for many years, and has been paid for by the Government, as will be found by reference to a few recorded instances.

In finding of fact number 10, on page 7 of the printed Record, the Court of Claims say: that a "similar index of the election returns of the election of 1890 was made out" * * * "and has been paid for."

In Dennison *v.* The United States, 25 Court of Claims, page 304, the principal item of the claim was for "entering and indexing the records of names of persons who were registered and who voted for Representatives in Congress in the several cities," &c. In the decision of that case the Court allowed that item as a legal and proper charge for official service.

In Allen *v.* The United States, 26 Court of Claims, page 445, the whole subject of the allowance for services of this kind by the Chief Supervisor was carefully discussed and allowed. The case of Dennison *v.* The United States, in so far as it allowed the item referred to, was approved, and upon the subject of these records and charges, the Court, in the Allen case, say: "When the books or lists of the subordinate supervisors were returned to the Chief Supervisor they became the basis of a record in his office, and with them he had a right to deal, under said sections. * * * It may be," the court say, "that some of the information as to the voter might have been omitted consistent with the object and purpose of the statute; but there is no suspicion aris-

ing from the evidence in this case that the record was made unnecessarily prolix for the purpose of accumulating fees. It is difficult to understand how a record can be entered and indexed without spreading it at large upon some book of the office, and the fact that the services are to be paid for by the folio is an indication of substantial clerical work." * * * "The officers entrusted with the execution of the law must be given some discretion in what they will embody in the lists, and so with the Chief Supervisor, when the papers reach his office he must be permitted to exercise his best judgment as to how they shall be entered and indexed, and if by the entry of the entire list the public convenience is subserved and the purpose of the statute accomplished, the law allows the compensation prescribed for the service."

In passing upon a similar account of this claimant for "entering and indexing" the records of the election of 1892, Judge William A. Woods, circuit judge of the Northern District of Illinois said: "Item thirteen is for work done in 'entering and indexing' records in the manner described in the affidavit accompanying the account. Similar charges were presented for the years 1888 and 1890 and reference made to the ruling of the Court thereon, that of 1888 having been disapproved by Judge Gresham, and that of 1890 having been approved (by myself) upon the authority of the Court of Claims in Allen *v.* the United States, 26 Court of Claims, Reports 146. Reference is also made to the action of the United States Circuit Court for Indiana upon a like charge in the account for 1890 of Mr. Van Buren the Chief Supervisor for that State. But, as is shown by the decisions of the Supreme Court in United States *v.* Jones, 134 U. S., and United States *v.* Poinier, 140 U. S., the rulings and opinions of the Circuit or District Courts in passing upon accounts presented as this is, are not judicial or conclusive, but constitute only *prima-facie* evidence of

the correctness of the accounts, and are subject to be reviewed and disregarded by the officers of the Department in aid of which the courts are required to act. On the other hand, the decisions of the Court of Claims are made in formal cases or suits invoking judicial action, and consequently, unless appealed from, are conclusive and authoritative. By the decision in the cases mentioned, the charge in this account for entering and indexing is justified. It is, therefore, ordered that that item of the accout be approved upon the authority of that decision."

The only reported opinion adverse to those above referred to is that of Judge Gresham rendered in passing upon the account in controversy.

We submit that there can be no question as to what constitutes the records of the office of the Chief Supervisor under this statute. His office is made the repository of these registers and lists returned by the supervisors of election. These are to be preserved, but they are temporary memoranda made by the supervisors at the polls and registering places. Considering the objects in view and the express statements in the statute, it is evident that the law contemplated that these records should be put in some permanent and convenient form for use in prosecutions for violation of the Elective Franchise act, and in determining at subsequent elections who were, and who were not qualified voters. In this way legal voters have some official record of their having voted, and consequently of their right to vote at subsequent elections; illegal voters could be easily detected, and the candidate for Congressional representatives could "obtain the benefit of every vote for him cast."

The statute provides for the payment of the services for entering and indexing the records by the folio showing that it was contemplated that a considerable record should be kept, and it must be apparent to every one who considers

the subject that such records would be of little or no value if they remained in the temporary books returned by the supervisors. To be of service the information relating to the qualification of each voter must be entered upon a permanent record specially indexed, or, what is equivalent, putting each name in alphabetical order. The extent of each record must be left somewhat to the discretion of the officer in charge. The statute does not prescribe exactly what facts shall be entered at length into the record kept by the Chief Supervisor, but it must be assumed that the record must contain the essential facts entitling a person to vote.

We submit that a careful examination of the sample page of the record in this case, Exhibit "A" referred to, and the statute fixing the qualifications of voters in Illinois at that election, will show that nothing is included in the record not required as a fact in determining the right of a person to vote at the election in the district where this record was kept, and that anything short of this record would not give to the public and the Chief Supervisor the information requisite in determining whether or not a person offering to register was entitled to vote at the election. It is impossible in such cases to lay down a fixed rule as to all the questions involved. Something must be left to the discretion of the officer, and in determining whether he has acted within the scope of his authority we must take into consideration the object which the law had in view and sought to attain in creating the office and providing that the records should be kept.

This honorable Court in the case of the United States *v.* Barbour, 140 U. S., page 177, said, in relation to the amount of charges made for drawing complaints:

"It is evident that no iron rule can be laid down upon the subject, that something must be left to the discretion of the

District Attorney and Commissioner, and that if the complaints are not unnecessarily prolix their action should be sustained. This is a question of fact in all cases and as the Court below has found not only in its formal approval of this account but in its opinion upon the demurrer that no unnecessary verbiage was employed and no surplusage to increase fees we think the item should be allowed."

Applying this rule to the case at bar, it will clearly appear that the record kept by the claimant as Chief Supervisor was in every way justified. When we consider that these records have been kept in the same manner by this claimant and other Chief Supervisors; that the Department has paid these accounts without question since the decision in the Allen case, and that the Court of Claims decided that it was a proper record to keep, the claimant was certainly justified in performing these services, and he should be compensated therefor unless the reasons set forth in the conclusion of law by the Court of Claims in this case can be sustained, and we respectfully submit that the action of the officers of the Government, and the decisions by the Court of Claims in reference to these records ought to estop the Government from now asserting that these records were not authorized by the statute. This was undoubtedly the view of the Court of Claims, for, in deciding this case, no question is raised in reference to the correctness or propriety of the record itself, and the refusal to allow the claim is placed upon other grounds.

In finding of fact "four," the Court of Claims say that the Circuit Court of the United States found "that said account was correct as to the number of folios embraced therein, and that the item for stationery and supplies necessarily used in making said record was correct," and in finding "seven," they say that the lists made by the supervisors and returned to this claimant of the election of 1888, "were re-

turned to and filed by him and became a part of the records of his office;" and that "said lists were necessary for properly guarding and scrutinizing said election and the registration prior thereto."

It will, therefore, be seen that no question is raised as to the amount of the services rendered or the disbursements made, or that these records became and were part of the records of the office of the Chief Supervisor of the Congressional election of 1888, nor does the Court raise any question as to the propriety of this record or any part of it. The refusal to allow the claim is distinctly placed upon other grounds.

With reference to the conclusion of law of the Court of Claims herein, we have assigned four errors, and will discuss them in the order named.

First.

The Court erred in holding that the right to recover in this case is conditioned upon the defendants having derived benefit from the services rendered by the claimant.

While it is undoubtedly true that the object of all such legislation is to confer a benefit upon the public and to secure certain protection, yet it has never been held that the right to recover statutory fees for services rendered by an officer in pursuance of the requirements of the statute creating his office, depended in any degree upon actual or particular benefits received by the public. Records may never be consulted, yet the officer who made them in pursuance of a statute is entitled to the compensation allowed by the statute. Records may be made by an officer and destroyed by fire the next day, thereby depriving the public of any possible benefit from his work, and yet the officer is entitled to his compensation for making the record. Statutes are

made providing for keeping records for the benefit of the public and the protection of private or public rights, making the records notice of certain facts contained in them; the law may be repealed, but the repealing of the law does not affect the claim of the officer who has made such records for the compensation allowed him by the statute; nor is he excused from completing his records up to the date of the repeal unless specially relieved from so doing by the repealing act. In short, the officer does not assure the public any benefit from his work. It is a duty prescribed by law for which certain compensation is made, and it is his duty to perform the work, and having performed it he is entitled to the compensation regardless of whether the public have actually received any benefits from it or not. The statute is responsible for the necessity of the work and not the officer. The fees are fixed by the statute and are payable when the work is done. It is true that where the extent of the record is left to his discretion he must exercise that discretion reasonably, but as noted above there is no question in this case that the record is a proper one. In the Allen case the Court of Claims said: "This Court has held in a number of cases that commissioners, clerks, marshals and supervisors have a right to whatever fees the law prescribes for any and every act, which may be done in their official capacity, without reference to the necessity of the service." We submit, therefore, that the Court of Claims erred when it said with reference to this claim for statutory fees, that "the defendants having therefore derived no benefit from them, the claimant should not recover."

Second.

The court below erred in holding that the services mentioned must necessarily have been performed before the Congressional election of 1890.

There is no such language or limitation in the statute. The law nowhere limits the use of these records to the Congressional election next following the one in reference to which the record is made. These records are made for all time, and for use at any election or in the trial of any issue affected or determined by them. They are the records of an office created by law. A person who voted, or whose vote was challenged and refused at the election of 1888 may not have offered to vote at the next succeeding election in 1890, but may have tendered his vote in 1892 or subsequent elections had the statute remained in force, and these records would have been used in determining his qualifications and in aiding the supervisor of election in "scrutinizing the vote." The finding of the Court of Claims in this case (finding ten) says, "it was used by the claimant in the election of 1892." Several witnesses, who were officers, testified to the use of these records in 1892. True, the Court of Claims adds "to what extent does not appear," but these words, if they are words of limitation, do not affect the fact that the records were used and do not impair the argument which the finding justifies. It would be impossible to show the extent of the use of such records. Their effect in deterring illegal voters from offering to vote; in determining the action of the supervisors who found the name and qualifications of a person offering to register and vote set forth in the records of the election of 1888 as having voted. It is not regarded by the claimant as necessary to show that these records were in fact ever used in order to entitle him to his statutory fees, but the evidence introduced upon this point illustrates the uses of the record and the fact that its use continues beyond the succeeding election. In the Allen case the claim was for entering and indexing the records of the Congressional election of 1886, account of which was not filed until November 6, 1889, after the Congressional elec-

tion of 1888. It does not appear from the findings in that case that Allen performed the services between 1886 and 1888 or that in any account for services in 1886 rendered before 1889 he reserved the right to claim and sue for his services for entering and indexing the records.

This work of entering and indexing the records returned by the supervisors in their registers and lists is a laborious task involving much time and clerical work, and while the statute clearly directs that the records shall be entered and indexed it does not fix any time within which it shall be done nor does it put any limitation upon the claim for the statutory fees provided. The reason why these records were not completed before the Congressional election of 1890 does not appear. It may be that the action of the Treasury Department in 1889 disallowing the claims of Charles M. Dennison and John J. Allen for such services, had the effect of deterring Chief Supervisors from incurring the large expense necessary to perfect their records until the right to compensation therefor should be determined by the Court of Claims in the Dennison and Allen cases. It was a new departure for the Comptroller to refuse to pay the fees for making this record for which the Department of Justice thought "Comptrollers Dunham and Matthews deserve well;" a new policy of the Department and undoubtedly a surprise to the Chief Supervisors who had been making their records and receiving their fees for these services in the years past. If the action of the Government officers in disallowing the claims of Dennison and Allen in 1889 did have the effect to postpone the completion of the records of the Chief Supervisors until after the decision of the Court of Claims in 1890 and 1891, such action ought not to affect unfavorably the right of the Chief Supervisors, after the court had passed upon the question, to complete their records as required by law and collect their fees and disbursements therefor.

It would undoubtedly have been a convenience to have had this record for use at the Congressional election in 1890, but this may be said of all records. The clerk of a court, for instance, may not be able to write up the records of a term before the succeeding term has commenced, and it would be a convenience to the court to have the records written up, yet it never has been questioned that it was the duty of the clerk to complete his record, and, having completed it, he is entitled to his fees for making the record.

We respectfully submit, therefore, that as there are no words of limitation in the statute either providing that the record shall be completed before the succeeding election, or limiting the use of the records of an election to the succeeding election, the Court erred in reading such a limitation into the statute and holding that because the records in this case were not completed before 1890 therefore the claimant cannot recover.

Third.

The Court erred in holding that the services mentioned must be deemed voluntary, and the claimant therefore cannot recover.

It cannot be said that any act of an officer is voluntary when it is required by the statute, and compensation therefor is prescribed by the statute. The statutes cited show clearly that it was the duty of the Chief Supervisor to preserve, "enter, and index" the records of his office, and provides that he shall be paid fifteen cents per folio for such service. These records, as already noted, were made up largely of the registers and lists returned by the supervisors.

"A record, in its broad and general sense, is a memorial of what has been done; authentic written evidence, considered as either public or private, but usually public. It is a written account of some act, transaction, or instrument, drawn up,

under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which it relates."

Am. & Eng. Ency. of Law, Vol. 20, p. 474.

In Black's and Bouvier's Law Dictionary the definition is thus given: "A written memorial made by a public officer authorized by law to perform that function, and *intended to serve as evidence of something written, said, or done.*" No more exact definition of the purposes of the records in this case can be given than those we have quoted. A record of a public officer has for its sole object and purpose the preservation in some fixed and stable form, something which has been done or said in the course of the performance of some public duty. The desirability of such memorial has become fixed in public policy and is universally adopted.

It is plain that its object is to preserve an authenticated memorial of some public act in order that whoever may in the future have an interest in the subject-matter may be enabled to turn to it and determine with accuracy what was in fact said and done on any particular occasion. In entire accord with this idea the statute omits to provide by terms or by necessary (or possible) inference that such record is made for some particular use in the future. It necessarily refers to the primary reason for which all records are made, namely, to embalm in an accessible form what has been previously said or done. That such are public records in the general sense was determined by Hughes J. (43 Fed. Rep., 911–912), in the matter of Depriest *et al.* Referring to the right of the supervisors of election to inspect the registration books kept by the State register, the learned judge says:

"The registration books kept by each registrar *are public records*, open to inspection by officers of election." * * *

"For the purpose of the approaching election these registration books *are not only public records in the general sense* as distinguished from secret documents in close and special custody, but they are Federal records, showing who may register and vote in a Federal election."

These words evidently mean *any* approaching election.

See also State *ex rel.* Thomas *vs.* Hoblitzell, 85 Mo., 620; State *ex rel.* Ferry *vs.* Williams, 41 N. J., Law, 332.

When, therefore, the statute requires that the Chief Supervisor shall preserve, enter, and index the records of his office, and fixes his fees for such service, it imposes a duty upon him, the performance of which cannot be, in the sense used by the Court below, considered voluntary.

Fourth.

The Court erred in dismissing the complainants' petition.

In thus summing up the objections to the ruling of the Court of Claims in this case we combine all the special objections heretofore raised in order to meet the claim that there is but a single position taken by the court below, no matter what language it may have used in expressing its conclusion of law. That what the Court of Claims really decided was, that because these records were not written up before the Congressional election of 1890, therefore the claimant cannot recover. We have already answered this position, but we desire to call the further attention of the Court to the purpose of the legislation with reference to other sections of the statute, and other subjects in order that it may appear clearly that these records were not intended to be used solely by the supervisors at the next succeeding election.

The laws enacted by Congress in reference to Federal elections look not only to the prevention of fraudulent voting, but equally to the punishment of such voting.

Section 5511, Revised Statutes, provides:

"If, at any election for Representative or Delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead, or fictitious; or votes more than once at the same election for any candidate for the same office, or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself, or any other person" * * * "he shall be punished by a fine of not more than five hundred dollars or by imprisonment not more than three years, or by both, and shall pay the costs of prosecution."

Section 5512 provides:

"If, at any registration of voters for an election for Representative or Delegate in the Congress of the United States, any person knowingly personates and registers, or attempts to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently registers, or fraudulently attempts to register, not having a lawful right so to do;" * * * "every such person shall be punished as prescribed in the preceding section."

Section 5523 provides:

"Every person who, during the progress of any verification of any list of the persons who may have registered or voted, which is had or made under any of the provisions of title 'THE ELECTIVE FRANCHISE,' refuses to answer, or refrains from answering, or, answering, knowingly gives false information in respect to any inquiry lawfully made, shall be punishable by imprisonment for not more than thirty days, or by a fine of not more than one hundred dollars, or by both, and shall pay the costs of the prosecution."

Either of these crimes is punishable within three years after the offense (act April 13, 1876, 19 Stat. L., 32; sup. to the Rev. Stat. U. S., vol. 1, p. 98). Will it be contended

that the record in question could not be used by the Government as evidence in prosecutions under these statutes? Such record would be the best evidence, and that it may be such and so used is undoubtedly one of the purposes contemplated in its requirement. Legally such indictment may be found after the next election and be tried years thereafter, and such record would be admissible, though the law was long since repealed.

Article I, section 5, of the Constitution provides that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members." It is unnecessary to recall to this Court the fact of the numerous and exciting contests for seats in the House of Representatives. It is of common knowledge that often these contests are undecided till the very closing hours of the Congress for which the election was held. Thus frequently a hearing is had and a determination not reached till after a subsequent election. It is too plain for extended argument that the record, such as this is, may be the most important source of evidence either from its own statements or as an aid to refreshing the recollection of witnesses. It would disclose illegal votes; it would open the avenue to the detection of fraud. The most important consequence through National legislation may result from the use of the record.

This is not the only connection of the records of the Chief Supervisor with Congress. In *Ex parte* Seibold, 100 U. S., 371–389, the Supreme Court says:

"That the duties devolved on the officers of election are duties which they owe to the United States as well as to the State, is further evinced by the fact that they have always been so regarded by the House of Representatives itself. In most cases of contested elections, the conduct of these officers is examined and scrutinized by that body as a matter of right; and their failure to

perform their duties is often made the ground of decision. Their conduct is justly regarded as subject to the fullest exposure; and the right to examine them personally, *and to inspect all their proceedings and papers has always been maintained.*"

From these citations it will be seen that the records which were kept by the Chief Supervisor were not limited in their use to any particular time, nor were they solely for the use of supervisors at elections. The purpose of the statute was broad and comprehensive. The making of the record was imposed as a duty upon the Chief Supervisor. The record was to be used whenever and wherever it would promote fair and honest elections and aid in the punishment of the crime of illegal voting.

The fact that this act has been repealed since the trial of this case in the court below cannot in any way affect the right of recovery. Upon this point we need not cite any authorities.

In conclusion, we respectfully submit that the claimant in this case has been an officer of long standing, faithful in the performance of his duty and of excellent character and reputation. There is no pretense that in the details of the work of his office he has shown any attempt to multiply fees or unnecessarily increase expense. He has followed the practice which has prevailed with reference to entering and indexing the records of his office, a practice which has been recognized for years by the Department and has been sustained by the Court of Claims. The delay in entering and indexing the records of the election of 1888 until after the Congressional election of 1890 is not attributed to any neglect on the part of the claimant, while his intention to do this work and to present his account for the service is clearly shown by the entry made upon his account for other services rendered at the Congressional election of 1888, while that account was pending before the First Comptroller. (See finding ten.)

We, therefore, respectfully submit that the Government ought to pay for the services rendered by the claimant in this matter and for the disbursements made by him and for the reasons stated, the decision of the Court of Claims should be reversed and a judgment entered for claimant.

Respectfully submitted,

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Of Counsel.

155-673

Office Supreme Court, U. S.
FILED.
DEC 13 1894
JAMES H. McKENNEY,

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ELIJAH B. SHERMAN, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 664.

BRIEF FOR APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ELIJAH B. SHERMAN, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 664.

BRIEF FOR APPELLEE.

The facts of this case are so fully set out in appellant's brief as to need no recapitulation in this brief.

ARGUMENT.

I.

Section 2026, Revised Statutes, in defining the duties of chief supervisors, provides, among other things, that "he shall receive, preserve, and file * * * all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof," etc.

Section 2031, in fixing the fees of said office provides, among other things, "for entering and indexing the records of his office, 15 cents per folio."

But no statute expressly makes a duty of this latter service.

Finding VII of the Court of Claims says: "Claimant, as chief supervisor, required of supervisors of elections lists of persons who registered and voted * * *; such lists when made were returned to and filed by him *and became a part of the records of his office*."

Claimant copied these lists filed in 1888 *in full*, except he arranged them in alphabetical order, although they were already *records of his office*. This may have been "indexing," but it can hardly be considered as "entering." It was not done until after the congressional election of 1890.

If there is any indexing of such records as this contemplated by the statute it should manifestly be confined to an alphabetical list of the names and reference to the record, and the number of folios to be paid for should not be swelled by the unnecessary repetition of data already in the records, which would be substantially a second recording.

Whatever "entering" is contemplated in the statute must of course be confined to the entering and preserving in permanent form such information as may be necessary and requisite to a proper operation of the office, and which is not already in the records. The portion of section 2026 above quoted shows that only so much work of this character was to be done as was necessary for the proper performance of his duties, and the record in this case shows that whatever may be said of the "indexing" the "entering" or copying the records of his office was an unnecessary act.

In the case of *United States* v. *Poiner* (140 U. S., 160), this court held that a chief supervisor could charge for

indexing, but not for recording appointments of supervisors, thus asserting that the court, and not the chief supervisor, as contended by claimant's counsel, is the proper judge of what are necessary records.

The court below found (Finding VII) that the lists of supervisors when returned to the office of the chief supervisor were records of his office, and "were necessary for properly guarding and scrutinizing said election and the registration prior thereto," but it did not find that the *copies* of said lists for which this charge is made were necessary, and this court should not so find them, but should declare them to be unnecessary and gratuitous acts, for which no compensation should be allowed.

If this work was necessary at all, it was necessary for use at the next following election of Members of Congress, and the claimant has conclusively established one of two propositions—either that the work of "entering and indexing" was unnecessary or that he failed to perform his duty. Either of these propositions is fatal to his recovery.

Without asserting such motive in this case, it must not be overlooked that the same acts here disclosed are just those which would have been committed by a chief supervisor who sought to distort this statute from its avowed purpose of protecting the purity of elections of Members of Congress into a weapon for the unlawful interference with the election of State officers, viz, electors of President and Vice-President, a purpose which, if established would most certainly preclude right in the supervisor to compensation from the United States for acts done to accomplish it in excess of those necessary to carry into effect the true

purpose of the act. If this entering and indexing was not necessary to secure a pure election of Congressmen in 1890 it certainly could not be necessary to that end in 1892, while in the latter year it might be very useful for another and unlawful purpose. The allowance of the fees therefor would seriously enlarge the opportunities of recovery in favor of any supervisors not acting in good faith.

II.

Most of claimant's argument is predicated upon the often-repeated assertion that the statute required claimant to do this particular indexing and entering, and that, there being no limit of time within which the work was to be done, it was by command of statute still his duty to do it, although the time when it might serve any legitimate purpose had passed.

This argument fails entirely in its very premise. The statute does not *require* the work. It, at most, merely permits it to be done at the expense of the Government to such extent as is necessary, and when the election at which it might have been necessary was passed that permission had been exhausted.

The same defect in the same premise destroys the argument that an officer's right to compensation for performance of an act enjoined on him expressly by law is not affected by consideration whether Government in fact derived benefit. The act was not expressly enjoined upon the supervisor, and its necessity being in doubt the entire absence of benefit to the Government would become material to the resolution of that doubt. Claimant's neg-

lect to prepare this index at a time when it might have been necessary did not confer on him the right to do it afterwards at the expense of the Government, when both the necessity had passed and benefit to the Government had become impossible by reason of that neglect.

Respectfully submitted.

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